But in *Joannes* v. *Bennett*, 5 All. 169, and several other cases, such communications, unless previously solicited, are held not privileged. See *Byam* v. *Collins*, 39 Hun, 204.

It has been decided by a recent case in the Court of Queen's Bench (*Thompson* v. *Dashwood*, 11 Q. B. D. 43) that mailing a letter, *prima facie* privileged, to the wrong person does not take away the privilege. The court put the case on the ground that the animus with which the plaintiff acted determined the question of privilege, and that, if his intention was otherwise justifiable, the privilege could not be taken away by a mere mistake.

The case has, as yet, been but little cited or discussed. It would seem, however, since the privilege exists only between certain persons, that any publication to other persons, by conduct involving negligence, should be held to be a violation of the privilege.

In *King* v. *Patterson*, 49 N. J. Law, 417, it was held that a mercantile agency was justified in making *bona fide* statements, which were false, in regard to the standing of a business firm, only when the publication was sent to those having actual business relations with the person libelled, the case belonging to that class of privileged communications where the communication is made in the interest of the person receiving it. This application of the rule is almost equivalent to saying that every statement in such a publication, which cannot be justified under the plea of the truth, is at the risk of the agency; for but few, if any, of the customers of a commercial agency can have such a direct personal interest in the standing of all persons rated in its publications as this case requires. The contract usually made by the agency with its customers, not to divulge the information given, strictly speaking, affords no protection, for it is a libel to publish such statements, even to a customer who has no interest in them. There was a dissenting opinion in *King* v. *Patterson*, but the case is supported by decisions in other States. See *Sunderlin* v. *Bradstreet*, 46 N. Y. 188.

The question whether a communication is conditionally privileged is a question of law for the court. *Gassett* v. *Gilbert*, 6 Gray, 94, 97. To destroy the privilege the plaintiff must prove "actual malice," which can be done, and is often done, by showing that the defendant exceeded the conditions on which the privilege rests, without other evidence of a malicious purpose. See per Ld. Blackburn, in *Capital and Counties Bank* v. *Henty*, 7 App. Cas. 741, at 787. But if the statements are in all other respects within the conditions of the privilege, a malicious or improper motive in making the publication will render the defendant liable. See *Stevens* v. *Sampson*, 5 Ex. D. 53.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ATTORNEY AND CLIENT — AUTHORITY OF ATTORNEY — COMPROMISE. — An attorney, by virtue of his employment, cannot bind his client by a compromise of the demand sued on. *Brockley* v. *Brockley*, 15 Atl. Rep. 646 (Pa.).

That an attorney may, without special authority from his client, dismiss a suit, extend time of payment, and, when he is employed in several suits, stipulate that the decision of one shall determine the others, see note at end of this case.

CARRIERS — INTOXICATED PASSENGER. — Partial intoxication does not excuse want of ordinary care and prudence on the part of a passenger, and a railroad company need exercise no higher degree of care towards a person partially intoxicated than is required in case of persons not intoxicated. *Missouri Pac. Ry. Co.* v. *Evans*, 9 S. W. Rep. 325 (Tex.).

CONFLICT OF LAWS — CAPACITY TO CONTRACT — LEX LOCI. — Where a female infant executed in Ireland, where she was domiciled, an antenuptial contract, relinquishing all her rights of dower, it being contemplated at the time that she would live after the marriage in Scotland, it was *held*, on the death of the husband, that since her capacity to bind herself by the marriage contract must be determined by the law of the place where she was domiciled and where the contract was made, and since, under the Irish law, an infant cannot incur any except a beneficial obligation, she was at liberty to avoid the contract, and claim her rights as a widow under the Scotch law. "The principle of international private law, which makes, in certain cases, the law of the place where it is to be performed the legal test of the validity of a contract, rests, in the first place, upon the assumption that the parties were, at the time when they contracted, both capable of giving an effectual consent; and, in the second place, upon an inference derived from the terms of the document, or from the circumstances of the case, that they mutually agreed to be bound by the *lex loci solutionis* in all questions touching its validity," and can have "no application to a case in which, at the time when they professed to contract, one of the parties was, according to the law of that party's domicile, and also of the place of contracting, incapable of giving consent." *Cooper* v. *Cooper*, 13 App. Cas. 88 (Eng.).

It is to be regretted that in this case, since the contract was made in the country where the woman was domiciled before marriage, the Lords were not called upon to decide the interesting question whether the capacity to contract depends on the law of the contractor's domicile, or on the law of the country where the contract is made. Lord Halsbury, L. C., expresses a decided opinion that the laws of the domicile should govern in such a case, and not the *lex loci contractus*, relying chiefly on the authority of Story's Conflict of Laws, § 64. The other Lords seem to be in doubt.

CONSTITUTIONAL LAW — DELEGATION OF LEGISLATIVE POWER — SPECIAL LEGISLATION — LOCAL OPTION. — A local-option law, providing that, if the majority of the voters of any country shall vote against the sale of intoxicating liquors, no liquor license shall be granted in that county, is a lawful delegation of power by the Legislature, and is not in conflict with a constitutional provision that "the Legislature shall not pass private, local, or special laws regulating the internal affairs of towns and counties." *State* v. *Circ. Ct. of Gloucester Co.*, 38 Alb. L. J. 348 and 370 (N. J. Ct. of Errors & Appeals).[1]

This case also decides that a license law which establishes a different minimum license fee for the different towns and cities of the State, according to population, is not a violation of the constitutional provision against "local or special" laws, *supra*, but is a valid general classification.

The court was divided on each of the two propositions of the case, eight judges being for the majority opinion, and seven dissenting. A long opinion, with full discussion, supports each view.

See *State* v. *Pond*, 6 S. W. Rep. 469 (Mo.), digested 2 HARV. L. REV. 49, for the view that a local-option law is not a delegation of legislative power, but is a law to take effect upon the happening of a future contingency, namely, the vote of the people of the respective localities.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — "DRUMMER TAX." — A Texan statute, imposing a license tax on all drummers selling goods by sample, or otherwise, although a valid tax upon drummers who are inhabitants of the State, is an invalid tax upon drummers who are citizens of other States, being, to this extent, an unconstitutional regulation of interstate commerce. *Asher* v. *State of Texas*, 9 Sup. Ct. Rep. 1.

Robbins v. *Taxing Dist.*, 120 U. S. 489, digested 1 HARV. L. REV. 108, is followed as an authority without further discussion, and *Asher* v. *State of Texas*, 5 S. W. Rep. 91 (Tex.), is reversed.

In *Robbins* v. *Taxing Dist.*, *supra*, it will be remembered Waite, C. J., delivered

[1] [*S. C. Paul* v. *Gloucester Co.*, 50 N. J. Law 585.]

a vigorous dissenting opinion, in which Field and Gray, JJ., concurred. The two last-named justices do not express any dissent from this present decision.

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — DUE PROCESS OF LAW — PROHIBITORY LIQUOR LAW. — An Iowa statute prohibiting the manufacture or sale within that State of intoxicating liquors, either for domestic use or exportation, except for mechanical, medicinal, culinary, or sacramental purposes, making the sale or manufacture for other purposes a penal offence, providing for the abatement of such other sales or manufactures as a nuisance, and forfeiting the liquor unlawfully kept on hand, is not an unconstitutional attempt to regulate interstate commerce. The regulation of interstate commerce deals with questions of transportation, not of manufacture; the fact that the products of domestic manufacture are intended to become the subjects of interstate commerce does not bring the regulation of such manufacture within the control of Congress. *Kidd* v. *Pearson*, 9 Sup. Ct. Rep. 6, affirming 34 N. W. Rep. 1. See Cooley's Principles of Const. Law, pp. 66, 67, and *State* v. *Fitzpatrick*, 37 Alb. L. J. 290 (R. I.), digested 2 HARV. L. REV. 97, *accord.*

Kidd v. *Pearson* also holds that the abatement as a nuisance, under the statute, *supra*, of a distillery erected for the manufacture and sale of intoxicating liquors for other purposes than those specified, does not deprive the citizen of his property without "due process of law." *Mugler* v. *Kansas*, 123 U. S. 623, digested 1 HARV. L. REV. 304, is followed and cited as deciding "that a State has the right to prohibit or restrict the manufacture of intoxicating liquors within her limits; to prohibit all sale and traffic in them in said State; to inflict penalties for such manufacture and sale, and to provide regulations for the abatement as a common nuisance of the property used for such forbidden purposes."

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — POLICE POWER — LICENSING ENGINEERS. — An Alabama act, providing that engineers and other railroad employees shall be examined by a medical board to determine whether or not they are "color-blind," is a constitutional exercise of State legislation which may be validly applied to a railway company having its lines, on which an engineer runs, reaching into another State. A law passed by a State for the protection of the public safety, which is not directed against interstate commerce, and only affects it incidentally, is a valid exercise of the police power of the State, and remains in force until superseded by congressional legislation upon the subject. *Nashville, C. & St. L. Railway Co.* v. *Alabama*, 9 Sup. Ct. Rep. 28.

Smith v. *Alabama*, 124 U. S. 465, digested 1 HARV. L. REV. 405, is followed as authority. See Cooley's Principles of Const. Law, pp. 69–74, *accord.*

CONSTITUTIONAL LAW — INTERSTATE COMMERCE — TAX ON TELEGRAPH COMPANIES. — Where a tax levied by a State upon a telegraph company consists of taxes on messages wholly within the State, and on messages partly within and partly without the State, and the record discloses the amount assessed on each class, the State can only recover the tax on those messages transmitted wholly within the State, the further tax being an unconstitutional regulation of interstate commerce. *West. Union Tel. Co.* v. *Com. Penn.*, 9 Sup. Ct. Rep. 6.

This case has an especial interest in being the first reported opinion of Chief Justice Fuller; the judgment is a model of brevity. *Rutterman* v. *Tel. Co.*, 127 U. S. 411, digested 2 HARV. L. REV. 143, is followed as authority without discussion.

CONSTITUTIONAL LAW — POLICE POWER — CIVIL RIGHTS. — The defendant excluded certain colored persons from his skating-rink. He was indicted under a clause in the Penal Code of New York, which declares that no citizen of the State can, by reason of race, color, or previous condition of servitude, be excluded from places of amusement. It was contended that this clause violates the provision of the United States Constitution that no one shall "be deprived of life, liberty, or property, without due process of law." *Held*, however, that the clause is within the police power of the State. The argument is that the 13th, 14th, and 15th Amendments to the United States Constitution show that discriminations against colored people are against policy if made by a State. They are as much against policy if made by a private individual in his business, provided his business, like that of the defendant, is of a public nature. The case, therefore, comes within the principle of *Munn* v. *Illinois*, 94 U. S. 113, "that where one devotes his property to a use in which the public have an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by

the public for the common good, to the extent of the interest he has thus created." *People* v. *King*, 18 N. E. Rep. 245 (N. Y.).

CONSTITUTIONAL LAW — POLICE POWER — REGULATING COLOR OF IMITATION BUTTER.— A State statute prohibiting the sale of imitation butter, unless colored pink, having for its object the prevention of fraud on the public in the sale of provisions, is a valid and constitutional exercise of the police power of the State. *State* v. *Marshall* abstracted in 38 Alb. L. J. 362 (N. H.).

Compare *Powell* v. *Penn*, 127 U. S. 678, digested 2 HARV. L. REV. 143, and *People* v. *Marx*, 99 N. Y. 377.

CONSTITUTIONAL LAW — PRIVILEGES OF CITIZENS.— The Maryland Act of 1884, c. 518, prohibits the use of vessels to buy oysters on the Chesapeake bay unless a license is obtained from the State therefor, conditioned upon a twelve, months' residence in the State, and the payment of a tonnage fee. *Held*, unconstitutional, as denying citizens of other States privileges enjoyed by those of Maryland. *Booth* v. *Lloyd*, 33 Fed. Rep. 593 (Md.).

CONTEMPT OF COURT — ADVERTISEMENTS FOR EVIDENCE. — A respondent in a divorce suit who *mala fide* placards about the village where his wife is living advertisements for evidence which are calculated to discredit her in the eyes of the public may be committed for contempt of court. But *semble* a *bona fide* attempt to procure evidence in a suit, even by an advertisement offering a reward, is not a contempt. *Butler* v. *Butler*, 13 P. D. 73 (Eng.).

CORPORATIONS — CONTRACTS IN RESTRAINT OF TRADE.— A steamship company, running vessels between New York and certain ports in Virginia, entered into an agreement with the defendant that, in consideration of a gross sum and certain monthly payments to be continued through five years, he would not run a competing line. A stockholder filed a bill in equity to restrain the company from going on with the contract, and to recover all that had been paid under it, upon the ground that it was *ultra vires*, and against public policy, because a restraint on trade. *Held*, that the contract was neither *ultra vires* nor against policy. With regard to the latter point it was said that the modern tendency is no longer to uphold in its strictness the doctrine which formerly prevailed about agreements in restraint of trade. This change is due to the enlargement of industrial and commercial facilities, so that little is to be feared from such agreements between individuals; and even corporations should be permitted to protect themselves from dangerous rivalry. But when they go farther than self-protection requires, and threaten the public good, then they should not be aided by the courts. *Leslie* v. *Lorillard*, 18 N. E. Rep. 363 (N. Y.).

CORPORATIONS — VOTING POWER OF PLEDGEE OF STOCK.— The voting power incident to ownership of shares of stock in a corporation is not lost when they become the property of the corporation, but is in effect equally distributed among the individual shareholders. When, therefore, the directors of a corporation pledge its own stock to secure a loan, they may expressly confer on the pledgee the right to vote on the stock, if by so doing an additional consideration is secured enuring to the benefit of all the shareholders. *Allen* v. *De Lagerberger*, 20 W'kly Law Bulletin, 368 (Superior Court of Cincinnati).

DEED — SHIFTING USE — AFTER-BORN CHILDREN. — Land was conveyed by deed to "Marion R. Mobley and the children she already has, and may hereafter bear, by her husband." *Held*, the estate vested in the living grantees, subject to open and let in the after-born grantees. The living grantees "may be regarded as trustees of a shifting use." *Mellichamp* v. *Mellichamp*, 5 S. E. R. 333 (S. C.).

DURESS. — The refusal of a bank to honor a depositor's checks, until the latter should release a claim against the banker, constitutes duress. *Adams* v. *Schiffer* 17 Pac. R. 21 (Col.).

DURESS — FINANCIAL EMBARRASSMENT. — A purchaser who has not caused the financial embarrassment of the seller, but takes it as an occasion to drive a hard bargain with the seller, does not exert duress. *Id.*

EVIDENCE — "COMPARISON OF HANDS." — SUBMISSION OF WRITINGS TO JURY. — Where certain signatures of a testator have been proved genuine, and witnesses have testified as to whether these signatures are in the same handwriting as the signatures in question, it is not proper to submit the signatures to the jury for their inspection and comparison. *Fuller* v. *Fox*, 7 S. E. Rep. 589 (N. C.).

In those jurisdictions where "comparison of hands" is allowed it is generally permissible to submit the writings to the jury. *Moody* v. *Rowell*, 17 Pick. 490; *State*. v *Ward*, 39 Vt. 225.

EVIDENCE — CROSS-EXAMINATION OF WITNESSES — INTERVENORS. — Third parties filed an intervention in a suit. On some of the issues presented, the interests of the plaintiff and defendant were identical in being opposed to those of the intervenors. The intervenors objected to the plaintiff's propounding, on cross-examination, leading questions to the defendant's witnesses on these issues. *Held*, that the intervention of third parties could not modify the general rule authorizing one of the parties to propound on cross-examination leading questions to the witnesses introduced by his adversary, and the objections were overruled. *Succession of Townsend*, 3 So. Rep. 488 (La.).

EVIDENCE — HEARSAY.— Defendant, having sold a pump to the plaintiff, sent an agent to put it in the plaintiff's well. While the agent was engaged in setting the pump, it fell in and destroyed the well. *Held*, in an action for damages against the defendant for the negligent conduct of his agent, that a declaration of the agent, made two hours after the accident, that the accident was caused by his own carelessness, was hearsay evidence and inadmissible. *Dodge et al.* v. *Childs et al.*, 16 Pac. Rep. 815 (Kans.).

HOMICIDE — LIABILITY FOR KILLING BY THIRD PERSON.— Several persons behaved in a riotous manner at a horse show, and when the town marshal attempted to arrest one of them knocked him down and beat him. The marshal, becoming alarmed, fired his revolver, and accidentally killed an innocent bystander. The court below charged the jury that if the defendants made the disturbance with the expectation that the marshal would attempt to arrest them, and if he defended himself in a reasonable manner, then all those who assisted in knocking down and beating him were responsible for the killing. *Held*, that the charge was erroneous. It is true that if the defendants, in prosecuting an unlawful purpose, should accidentally kill a man, they would be liable; but that the killing by another person was the reasonable outcome of their unlawful conduct is not enough to make them responsible. *Butler* v. *People*, 18 N. E. Rep. 338 (Ill.).

IMMIGRATION — CONTRACT LABOR — CLERGYMEN. — The statute entitled "An Act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States," imposes a penalty on any person or corporation encouraging migration of an alien under a contract or agreement previously made "to perform labor or service of any kind." Defendant, a religious corporation, engaged an alien residing in England to come to this country and take charge of its church as pastor. *Held*, that the corporation was liable to the penalty prescribed. *United States* v. *Rector, etc., of the Church of the Holy Trinity*, 36 Fed. Rep. 303 (N. Y.).

The statute contains a clause exempting from its provisions "professional actors, artists, lecturers, or singers," and in view of this proviso the court said that the words "labor or service of any kind" could not be given a restricted meaning so as to exclude the vocation of a minister of the gospel, but that they were intended to apply to all who labor in any professional calling not specially exempted.

INJUNCTION, PRELIMINARY — UNSETTLED RULE OF LAW.— On a bill for preliminary injunction by one rival water company against another, the legal right of the latter to do the acts complained of being in dispute *held*, that complainant is not entitled to a preliminary injunction when the right on which he founds his claim is, as a matter of law, unsettled. *Atlantic City Co.* v. *Consumers' Water Co.*, 15 Atl. Rep. 581 (N. J.).

LANDLORD AND TENANT — TENANCY FROM WEEK TO WEEK.— Where premises are let at a weekly rent, this constitutes a tenancy from week to week, and is a reletting of the premises at the beginning of each successive week; if, therefore, at the beginning of any week the premises are in a defective condition, the landlord is liable in damages to a tenant who, during the week, is thereby injured. *Sandford* v. *Clarke*, 59 L. T. Rep. (N. S.) 226 (Eng.); s. c. 38 Alb. L. J. 347.

This case is interesting as deciding the hitherto doubtful point that a weekly rental constitutes a tenancy from week to week. No authorities are cited.

LICENSE, BY PAROL — EQUITABLE ESTOPPEL. — A parol license to lay an aqueduct to a spring on the licensor's land is irrevocable after the aqueduct is constructed and during its continuance; and a court of equity will protect such license by injunction. *Clark* v. *Glidden*, 15 Atl. Rep. 358 (Vt.).

That a license to do an act on licensor's land, though acted upon, is revocable, see *Foot* v. *N. H. Ed. N. Co. et al.*, 23 Conn. 214; *Morse* v. *Copeland*, 2 Gray, 302.

LIFE INSURANCE — RIGHTS OF BENEFICIARIES. — A man describing himself as trustee for his children, insured his life for their benefit. He failed to pay the 16th annual premium, but shortly after it became due surrendered the policy to the company, which thereupon issued a new policy for the same amount and for the same annual premium, but payable to his second wife. The consideration of the new policy was the surrender value of the old. *Held*, that the old policy never lapsed, but was continued by the new, so that the children were entitled to the insurance. *Garner* v. *Germania Life Ins. Co.*, 18 N. E. Rep. 130 (N. Y.).

The court seemed influenced by the fact that the father declared himself a trustee, although it is not unlikely that the same conclusion would have been reached if the contrary had been true. Whether or not there could be a trust, depends upon the view which one takes as to the nature of the contract. If the beneficiaries have the sole legal right under the promise,—and such seems to be law,—then the father has absolutely nothing as the *res* to which a trust can attach. On the other hand, if the father has the sole legal right, there seems no technical difficulty in the way of his declaring himself a trustee, although the *cestuis* are already the legal beneficiaries. On either view there seem difficulties in the way of reaching the conclusion of the court.

(1.) Suppose the beneficiaries have the sole legal right. Then there is no trust. It follows that the father cannot make a valid release or surrender. Therefore the only defence left for the company is a breach of condition, unless the breach has been waived. Now, an ordinary life policy is a unilateral promise in consideration of a certain sum paid down to pay a certain sum to designated persons on the death of the insured, subject to the condition precedent that the insured pay annual premiums on fixed dates. *New York Life Ins. Co.* v. *Statham*, 93 U. S. 24. But see *contra*, *Worthington* v. *Ins. Co.*, 41 Conn. 372; *Phœnix Ins. Co.* v. *Sheridan*, 8 H. L. C. 745; and STRONG, J., in *New York Life Ins. Co.* v. *Statham*. It is clear that either payment on the day named, or payment altogether, may be waived by the company. Here there was a breach by the non-payment on the 16th annual premium on the day named. The company could, therefore, on the next day treat the policy as utterly null and valueless; but instead of so doing they issued, a few days thereafter, a new policy in consideration of the surrender of the old. Their attitude, therefore, precluded them from insisting that the old policy became void by breach of condition. Thus there was a waiver; yet it is hardly fair to say that there was more than a waiver of payment on a fixed day, not of payment altogether. Now it appears to be law—and it was so stated in this case—that the beneficiaries, as well as the insured, may perform the condition by paying the premiums. Accordingly the children, when they learned of the breach, must pay all premiums in arrear, and all future premiums when due, in order that there shall be no further breach of condition than that which the company has waived. The result, then, of the first view mentioned above is that the old policy continues unaffected by the surrender, and that the children may recover the full amount of insurance, if they have made the payments just indicated. The existence of a second policy, which may or may not be good, strictly has nothing to do with the case, although it is not, from a practical point of view, altogether a satisfactory conclusion that there should be two policies; yet perhaps it is no more unsatisfactory than the conclusion reached by the court, which certainly violates the intention of the parties.

(2.) Suppose the father has the legal right, on which he has declared a trust. Then he commits a breach of trust in converting the old policy into a new one. He ought, therefore, to hold his interest in the latter, subject to a constructive trust for the defrauded *cestuis;* and the new beneficiary, being a donee, ought to hold any proceeds of the policy also under a constructive trust. The extent of that trust will be measured by the surrender value of the old policy. Even if the father has declared no trust, he is under a duty to exercise the right vested in him in behalf of the beneficiaries so far as may be necessary to protect them; and clearly he commits a breach of that duty in the nature of a tort when he

destroys the right by surrender. Neither he, nor one in the position of a donee, will be permitted to profit by this transaction at the expense of the beneficiaries; and the proceeds may be followed as before by means of a constructive trust.

The court held that the old policy was merged in the new, so that the payments on the new were made as if on the old. The latter idea seems erroneous, because the payments were never intended to be made on the old policy, but for a very different purpose. Even if that purpose failed, there would seem no excuse for applying them directly contrary to the intention of the parties. It should be said, however, that there is considerable authority for the general result reached by the court.

See 17 Abbott's New Cases, 21, for a collection of cases.

MASTER AND SERVANT — LIABILITY OF RAILROAD COMPANIES. — A person who goes with cattle on a railroad, to feed, load, and unload them, does not become an employee of the company by signing on agreement that he should be deemed an employee, the contract of shipment showing that he is, in fact, the agent of the owner, and the company is still liable to his heirs, although his death was the result of negligence on the part of its servants. *Missouri Pac. Ry. Co.* v. *Ivy*, 9 S. W. Rep. 346 (Tex.).

MORTGAGE—BOND FOR TITLES—LIABILITY FOR TAXES. — In taxing real estate which is subject to a bond for titles, the public authorities may treat it as the property either of the maker or of the holder of the bond, when the holder is in possession; but, as between the parties to the bond, the one receiving the rents and profits, or enjoying the use of the property, is liable for the taxes. *Nat. Bank of Athens* v. *Danforth*, 7 S. E. Rep. 546 (Ga.).

RAILROAD COMPANIES — STOCK-KILLING — PRESUMPTION OF NEGLIGENCE. —In an action to recover damages for the negligent killing of live-stock by the defendant's train, proof of the fact of the killing, and that it was inflicted by a moving train belonging to the defendant, makes out a *prima facie* case for the plaintiff; the *onus* is then cast on the defendant to overcome the presumption of negligence by proof of the circumstances of the killing. *Mobile & G. R. Co.* v. *Caldwell*, 3 So. Rep. 445 (Ala.).

WILLS — EXECUTORY DEVISE—CIVIL DEATH.—The testator's son was given a remainder in fee subject to an executory devise if the son died without children. After the death of the testator the son was convicted of murder in the second degree, and was sentenced to the State prison for life. The particular estate upon which his remainder was limited subsequently terminated. It was claimed, under 2 Rev. St. N. Y. 701, § 20, providing that a person sentenced to imprisonment for life, "shall thereafter be deemed civilly dead," that the son, being dead in the eye of the law, and having no children, was divested of his estate, so as to let in the executory devisee; but the claim was not allowed, because civil death does not divest a man of his estate. *Avery* v. *Everett*, 18 N. E. Rep. 148 (N. Y.).

This case is valuable for a discussion of what constitutes and what is the effect of civil death.

WILLS — LOSS OF TESTATOR'S DUPLICATE. — Where a will is executed in duplicate, and the testator retains one copy in his possession and deposits the other in the custody of another person, if, at the testator's death, his duplicate is not to be found, a presumption arises that it has been destroyed by him *animo revocandi*, and, in the absence of evidence to the contrary, the will is presumed to have been revoked. *Jones* v. *Harding*, 58 L. T. R. 60 (Eng.).

This decision was based on the authority of *Luxmoore* v. *Chambers*, an unreported case decided by Sir James Hannen, Mr. Justice Butt saying that without the authority of that case he should be disinclined to reach the result he did.